

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH STEVENS & COMPANY, INC., :
Plaintiff, : 07 CV 3385 (BSJ)
: :
-against- :
: :
DAVID CIKANEK, :
: :
Defendant. :
: :
-----X

**DECLARATION OF ALISON B. COHEN IN FURTHER SUPPORT OF MOTION TO
VACATE ARBITRATION AWARD AND IN OPPOSITION TO RESPONDENT'S
CROSS-MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**
EXHIBIT B

Tape 10
4:14 pm.

Russo: Mr. Cikanek, you did sign the last two pages of this document did you?

Cikanek: Yes.

Russo: Ok. I believe you testified that Ross called you up and said that you had to fill out a form with respect to Manhattan Pharmaceutical. Is that right?

Cikanek: Yes, or I have a form for you to fill out.

Russo: OK. And you said to him, what kind of form? Correct?

Cikanek: Yeah, and he said it's a form that has to do with Manhattan Pharmaceuticals as I recall but I can't really recall.

Russo: Prior to Ross calling you about Manhattan Pharmaceuticals, you knew about the company right? It wasn't a surprise to you that Manhattan Pharmaceuticals was a stock that you were going to invest in.

Cikanek: Yeah, that Ross was going to invest.

Russo: OK. Now you said that Ross sent you this form. Do you know whether it was operations that sent you this form?

Cikanek: No Ross overnighted it to me.

Russo: Ross told you it was coming but do you know who actually sent it?

Cikanek: No.

Russo: And Ross had asked you to call him when you got the form to help you fill it out correct?

Cikanek: Correct. Not help me. Talk me through it.

Russo: OK. Talk you through it. Did you read the form yourself?

Cikanek: No

Russo: You didn't read it at all?

Cikanek: No. When I received it in the Fed Ex at 11:00 a.m. in the morning, I called him up.

Russo: When you called him up and you were going through these individual items you had discussions with him where you told him that the \$1,000,000 net worth was not accurate, is that right?

Cikanek: Yes.

Russo: So even though you didn't read the forms you knew that you were going to be signing the document informing Joseph Steven & Company that you had a \$1,000,000 net worth correct or excess of that.

Cikanek: No. I didn't realize that it was more getting it back to Ross.

Russo: You knew that you were checking off something that was untrue. Correct?

Cikanek: True

Russo: And you knew it was something that was going to be required in order for you to make this investment correct?

Cikanek: Yes

Russo: So you were willing to make a misstatement on this form so that you could purchase the securities is that right?

Cikanek: No, so Ross could initiate the trade.

Russo: OK. So that Ross could initiate this trade. So Ross could buy the securities for you, you were willing to make a misstatement on this form correct?

Cikanek: It wasn't a matter of making a misstatement, it was, the way that I thought of it was some formality that Ross needed to make the trade.

Russo: A formality. You understood that Ross couldn't do the trade without you checking that box correct?

Cikanek: Yeah. If he talked me through it and directed me, I did what he said.

Russo: So irrespective of whether it was true or not, you were willing to say that you had a \$1,000,000 net worth because you wanted Ross to be able to buy these securities for you correct?

Cikanek: No. Ross made the trade and made the decision to buy the stock.

Russo: You didn't have any rule in making the decision to buy this stock.

Cikanek: No.

Russo: None. Why didn't you tell Ross I'm not going to lie for you to buy this stock.

Cikanek: Why didn't I?

Russo: Yes

Cikanek: I don't know why. Because I trusted Ross for one thing.

Russo: Did Ross make the decision to sign the form?

Cikanek: Yes, everything on here, he told me where to sign and where to print my name and what to check off.

Russo: So you had no control over that?

Cikanek: Sure I had control.

Russo: Why did you tell Ross this is not true, why are you asking me to do this.

Cikanek: I can't tell you why except I trusted Ross and to do his job and initiate the trade. I did it.

Russo: Directing your attention to the top of page 23. Did you read this? That the purchaser represents and warrants that he/she/it comes within one category marked below and that for any category marked he/she/it has truthfully set forth where applicable the factual basis or reason the purchaser comes into the category. Did you read that?

Cikanek: What category is it?

Russo: Category A. It's 7.1 before the category

Cikanek: Oh. Yes. What was the question?

Russo: Can I ask for a direction? Can we move the witness? Only because counsel's reacting to the question, and I'm not casting aspersions, but he is reacting to questions and I asked him to not influence the witness at all or if we could just separate them. It's really distracting to me and I think it may be distracting to the witness.

Cikanek: My focus is on this. I can't see Perry when I'm looking at him.

Russo: Do you believe it was an error in judgment sir...

Chairman: Mr. Sugarman. I have a concern. And I know its not voluntary on your part, but may I just suggest that you simply put your chair on the other side of your client's so that you are sitting along side him.

Russo: Why is it you felt you should trust the gentleman that was asking you to lie in order to invest in securities.

Cikanek: I didn't think of it as a lie. I thought of it more as a formality. Now I recognize it was a lie. I mean ... actually, you know, I just wanted to get the form filled out and return it to him because he sent it to me and he said return it to me right away and provided the fed ex envelope, paid.

Russo: And that was generally your feeling with respect to all of the paper work that Mr. Inserra sent you over the years. Correct?

Cikanek: Yes.

Russo: So whenever Mr. Inserra might have told you put it on there whether it was truthful or not you would of done that on the forms that were sent to you?

Cikanek: I could think of no other form.

Russo: What about the new account for that had a \$1,000,000 net worth on it. Did you sign that because Mr. Inserra told you that you needed \$1,000,000?

Sugarman: Objection. There has been no testimony or evidence that there was a new account from that had a \$1,000,000 in it.

Chairman: Rephrase.

Russo: Sure. Remember we talked about the new account from earlier in this case and that you just glanced at the new account form before signing it. Remember that?

Cikanek: Yes.

Russo: And then when you glanced at it you saw that there was \$1,000,000 on there. Do you recall that?

Cikanek: No

Russo: You don't recall that?

Cikanek: No.

Russo: What was on the form. Do you know?

Cikanek: I can't recall

Russo: Did Ross tell you fill out any numbers on that form?

Cikanek: What form are you referring to?

Russo: The new account form.

Cikanek: For?

Russo: Joseph Stevens.

Cikanek: Joseph Stevens? I can't... Yeah, I probably discussed the form with Ross. Yes.

Russo: OK. And did Ross tell you to fill out the numbers in that form?

Cikanek: Yes.

Russo: So your testimony today is that you actually did fill out the Joseph Steven's form, new account form?

Cikanek: Yeah. I can't recall what was on the form.

Russo: So you didn't receive the form already filled out?

Cikanek: No.

Russo: It wasn't blank when you received it?

Cikanek: Pardon me?

Russo: The form wasn't blank when you received it? The new account form?

Cikanek: It was blank.

Russo: It was blank. OK, And you returned it filled out correct?

Cikanek: Yes.

Russo: When you were going through Category H on page 24 of Respondent's F, did you ask Mr. Inserra any questions. Withdrawn. Back on 23. I believe you told us that you knew that your response to category A and Category B were false. Correct?

Cikanek: Correct.

Russo: Did you have discussions with Mr. Inserra about Category H?

Cikanek: H?

Russo: Yes.

Cikanek: On the next page?

Russo: Aha.

Cikanek: No.

Russo: Ok. So, but did you read this as you were going through it and editing it?

Cikanek: No.

Russo: Ok. Why is it that Mr. Inserra instructed you to put your initials next to category H? Withdrawn. Did Mr. Inserra instruct you to put your category, your initials next to category H? Cikanek: Yes.

Russo: Did he instruct you to put your initials next to category A or B?

Cikanek: A or B?

Russo: Yes.

Cikanek: No.

Russo: Okay. Under subpoint 2, Suitability, do you see that?

Cikanek: Yes.

Russo: There's an A. And it says retired, and it looks like United Food and Commercial Workers Benefit, I can't read it.

Cikanek: Workers Benefits Fund.

Russo: Okay. Now do you see by the United Food, it looks like that's been whited-out or corrected. Did you make some kind of alteration on the form, Mr. Cikanek?

Cikanek: No.

Russo: That's original? That's how the original was?

Cikanek: Yes. I wouldn't – there was no reason to white it out.

Russo: Now let's talk for a second about your two-year associate degree in college. Why did you think it was important for Mr. Inserra to have you say that you have a college degree when you didn't?

Cikanek: I don't know and I didn't ask.

Russo: Why didn't you ask him?

Cikanek: Because I didn't ask him – because I was intent on filling out the information immediately.

Russo: Ok. But this is a situation where you didn't just check a box and not read it. You affirmatively wrote something that was not correct. Am I right?

Cikanek: He asked me if I had any college. I told him I had some junior college.

Russo: And then you affirmatively wrote something on this document that was not correct. Am I right?

Cikanek: Right.

Russo: Ok. And you understood that this was another formality that you needed to overcome in order to invest or have Ross buy...

Cikanek: I think my mistake was trying to satisfy Ross.

Russo: At all costs you would try to satisfy Ross?

Cikanek: No. Not at all costs.

Russo: Were you willing to...

Cikanek: Perjure myself.

Russo: I'm sorry?

Cikanek: Perjure myself.

Russo: Perjure yourself?

Cikanek: I, I don't know.

Russo: Were you willing to perjure yourself?

Cikanek: Well, I don't know.

Russo: Well, let me ask you the date in question.

Cikanek: It's not a matter of perjuring myself or telling a lie. It's the direction of Ross and he had to have this form in order to do his job. I wanted him to do his job in order to regain my losses. And he was the one that brought up Manhattan Pharmaceuticals and he didn't tell me it was a private placement.

Russo: Did you receive a private placement memorandum?

Cikanek: I can't recall.

Russo: We don't have any more copies of that. I wanted to show to the witness for the purpose to refresh his recollection. For the record.

Sugarman: Is that what you gave me a copy of?

Russo: It is.

Sugarman: Ok. I've seen it. I don't want to waste time.

Russo: It's Respondent's G. May I approach the witness?

Russo: Sir, when you take a look at that document, do you recall receiving a document from Manhattan Pharmaceutical from that?

Cikanek: All I can say is I probably did and I didn't read it.

Russo: Okay, fine. You said you were doing what you needed to do for Ross so that he could get your money back. Just recently. Do you recall that testimony?

Cikanek: To do his job to regain my money.

Russo: To do his job. And his job to regain or to recapture, to make your back your money, was to trade in securities and to generate profits, correct?

Cikanek: Yes.

Russo: And you understood that he would be doing that?

Cikanek: Yes.

Russo: Now when you filled out the new account form at Joseph Stevens, did you discuss with Ross that that would be his job?

Cikanek: Yes. I discussed, I had a discussion with Ross but I can't recall it, but the purpose of investing is to make money. It's not to lose money, at least the way I see it.

Russo: But, at this point in time, when you were at Joseph Stevens, you wanted Ross to recapture or make back your losses, correct?

Cikanek: When he was at Silver Capital, I wanted him to do the same thing. But....

Russo: Let me ask you first about Joseph Stevens, then I'll ask you about Silver Capital. With respect to Joseph Stevens, when you had that conversation with Mr. Inserra about filling out the new account form, you discussed with him that you wanted him to trade, do his job and make back your losses. Correct?

Cikanek: Yes.

Russo: How did you react, when, in the first 45 days the account went down \$150,000 I'm sorry, \$125,000?

Cikanek: I don't recall.

Russo: During this time period, you were on the phone with Ross, weren't you?

Cikanek: Constantly. Every day, if I could. Or if he was available.

Russo: Now, am I correct that when you were at LCP, and you filled out the new account form. Withdrawn. Did you fill out the new account form while at LCP?

Cikanek: Well, I would have had to in order to be an investor.

Russo: Ok. At that point you had had substantial holdings at Fidelity. Correct?

Cikanek: Correct.

Russo: And so you told Ross that you wanted him to trade your account. Withdrawn. I'd rather not put words in your mouth.. What did you tell Ross your objective was at that point?

Sugarman: Mr. Chairman, I think this has gone very far beyond...

Russo: Fair enough, I'll withdraw the question. Sir, are you responsible at all for the untrue statements that you made in this questionnaire?

Cikanek: Yes.

Russo: And, generally, are you responsible for any other misleading information that you may have provided to Joseph Stevens?

Cikanek: I don't know that I have.

Russo: Ok. But would you agree that if Joseph Stevens was given the impression by your new account form that you had a \$1,000,000 net worth that your annual income was over \$100,000 and that you wanted to trade your account to make short term profits; would you agree with me that that would have been misleading him in what you told us otherwise?

Sugarman: Again, I object to this question. You do not have any sort of documented evidence, there has been nothing offered to show that there has been any new account form but for counsel to keep suggesting that there is and keep asking questions about it is inappropriate.

Chairman: Can we have a copy?

Russo: We'll make copies for you. I didn't expect actually to introduce it into evidence. I can. At this point, I will pass the witness.